

Student's Guide

# Citizenship and Charters Program



L'ASSOCIATION DU  
BARREAU CANADIEN  
Division du Québec

THE CANADIAN  
BAR ASSOCIATION  
Québec Branch

The original French version of this guide was created by the Citizenship and Charters Committee of the Canadian Bar Association, Quebec Branch, in collaboration with Éducaloi.



The Citizenship and Charters Committee was responsible for the English translation.

## **WARNING**

This document does not constitute a legal opinion by the judges and lawyers involved in its preparation and drafting.

This document provides general information about the Canadian Charter of Rights and Freedoms and the Charter of Human Rights and Freedoms. Some nuances have been omitted or simplified in order to make complex legal concepts more comprehensible. A certain amount of freedom has also been taken to adapt the judicial cases cited to the needs of the program. This document should be used only to teach Charters to high school students in the context of this program.

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## PREFACE

Here are some of the reasons why I am pleased to sign the preface to this new version of our Program.

Like many members of the legal profession, I believe that every citizen should possess a basic knowledge of our judicial system, which is not perfect, but which deserves ample confidence and support. Our Program is designed with this in mind.

We all hear about the "Charters" and the clash of ideas (and values) when some demand that their fundamental rights be respected in the face of a more or less conciliatory majority. It is important to understand what the Canadian Charter and the Quebec Charter are, and the central role they play in our free and democratic society. Another objective of our Program is to demystify the Charters so that we may learn to appreciate their advantages and disadvantages.

In this regard, my basic reflection is that, with few exceptions, each and every one of us is part of a majority group somewhere, while also belonging to a potentially vulnerable minority because of a personal characteristic (age, language, religion, ethnicity, sexual orientation, etc.). In short, taking care of minority groups means taking care of yourself.

In addition, I am proud that the Canadian Bar Association - Quebec Branch has been supporting this program for over 20 years. Like the CBA-Quebec Branch, the Program brings together dedicated volunteers (lawyers and judges) who give their precious time to students who are eager to learn more.

Finally, the efforts of these volunteers are largely rewarded by the good reputation of the Program and by the warm welcome they receive in the schools and colleges visited.

**The Honourable Pierre-C. Gagnon,**  
Judge of the Superior Court

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# The Charters

COURSE

1



## FUNDAMENTAL RIGHTS AND CHARTERS

### I. Fundamental Rights

Quebec and Canadian laws contain many **rights** that protect people. Some of these rights, however, are considered more important than others because they ensure respect for **human dignity** and the **values of our free and democratic society**. These rights are called "**fundamental rights**." You certainly know a few: freedom of expression, the right to equality, the presumption of innocence ...



### II. The Charters

The Charters are **very important laws** ("super laws") that protect the fundamental rights of all of us, no matter where we come from and whatever our living conditions may be. There are two in Quebec:

- the Canadian Charter of Rights and Freedoms (or "**Canadian Charter**");
- the Charter of Human Rights and Freedoms (or "**Quebec Charter**").

The two Charters **do not exactly protect the same rights** and **do not apply to the same situations**. Let us examine these Charters in more detail.

## CANADIAN CHARTER

The Canadian Charter has been in existence **since 1982** and applies **throughout Canada**. It is part of the **Constitution of Canada**.

The Constitution is a set of laws and rules that determine how Canada should be governed. It is paramount to the functioning of the country and is considered the "**supreme law**" of Canada. This means that **all other laws** in Canada and the provinces **must respect the Constitution**. And since the Canadian Charter is part of the Constitution, all other laws must respect the fundamental rights that are found in it.



## QUEBEC CHARTER

The Quebec Charter is a law passed **in 1975** by the National Assembly. It applies only to the **territory of Quebec**.

Unlike the Canadian Charter, the Quebec Charter is **not part of the Constitution**. However, the Quebec Charter has a special stature and all other Quebec laws must respect the main rights it protects. Because of this particular status, the Quebec Charter is often described as a "**quasi-constitutional law**."

# THE JUSTICE SYSTEM

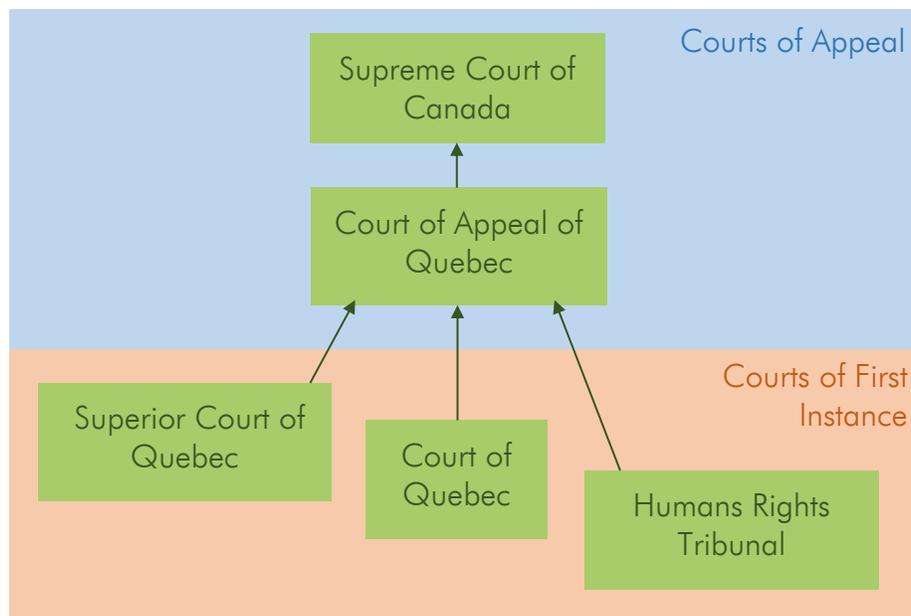
Persons involved in a court case are usually referred to as the "**parties**". A party may be an **individual**, but it can also be a **legal entity** (such as a corporation or an organization) or the **State**.

The parties present their version of the story and their arguments in a trial. There are two main types:

- **Civil trials** where one of the parties involved in a dispute asks the court to decide the disagreement in its favor (e.g. to obtain an amount of money);
- **Criminal trials** where the State accuses the other party of having done something prohibited by law and asks the court to find him guilty and to impose a sentence.

## I. Courts of Justice

The following diagram illustrates in a very simplified way the **hierarchy of courts** in Quebec:



The "**courts of first instance**" are those where the first trial takes place in a case. How do you know which of these courts has the power to make a decision on a particular case? It depends among other things on the amount of money involved and the nature of the case (e.g. custody and access, outstanding debt, criminal offense, etc.).

The "**appeal courts**" are those to which the parties apply when they do not agree with the decision of the court of first instance. The media often use the terms "go to appeal", "appeal" or "bring a case to appeal".

## II. The Supreme Court

The Supreme Court of Canada is the **highest court in the country**. It makes decisions on appeal on cases that have already gone through lower appeal courts across the country. It may hear civil or criminal cases on any subject.

The Supreme Court usually intervenes only if the matter is of **particular importance to the public** or for the **advancement of the law in Canada**. Moreover, the federal government may seek the Court's opinion on important questions of law even though there is no case or trial on these issues (this is called a "reference"). Therefore, the Supreme Court will often hear matters related to the Charters and fundamental rights.

The decisions of the Supreme Court are **final**. It is therefore no longer possible to appeal when the Supreme Court rules on a case!



## III. Appeal Before the Supreme Court

On appeal there are **two parties**:

- The "**appellant**" is the party asking the Supreme Court to overturn the decision of the lower court of appeal. It seeks to convince the court that this decision contains an error.
- The "**respondent**" is the opposing party, that is, the party trying to convince the Supreme Court to uphold the decision of the lower appellate court.

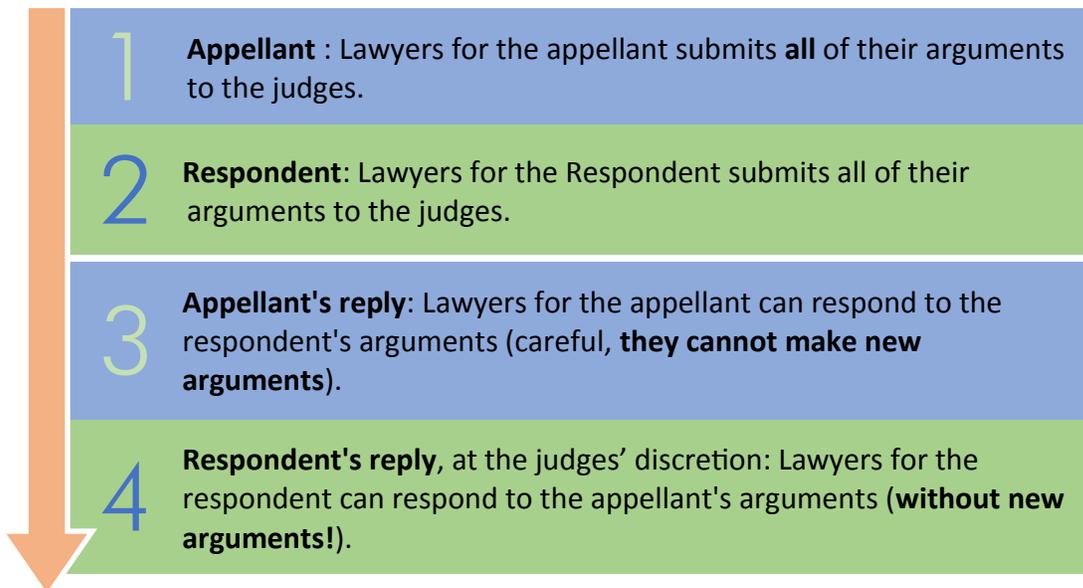


The parties **cannot present evidence when they appeal**. The Supreme Court therefore does not receive witnesses and must analyze the evidence that was presented during the first trial.

The judges of the Supreme Court may also make their decision on the basis of the **legal arguments** of the appellant and the respondent. These arguments are presented by lawyers for the parties in their "**pleadings**".

### *ORDER OF PLEADINGS*

The lawyers plead in a **fixed order**. This rule avoids surprises and allows each party to have an equal opportunity to present its arguments.



Fact : **a judge may ask questions at any time**. The lawyer to whom the question is asked must then stop their presentation and answer the judge's question.

## IV. The Actors on Appeal

### *LAWYER*

The lawyer is a specialist in the laws and their application. They are hired by a party to **represent them in court** and **give them legal advice**. The lawyer who represents a party in lower courts may be the same lawyer who represents that party before the Supreme Court.

Before going to court to present their arguments, lawyers must invest a great deal of time and effort in **preparing their case**. They must, among other things, conduct legal research, prepare arguments and write several documents in a timely manner.



### *JUDGE*

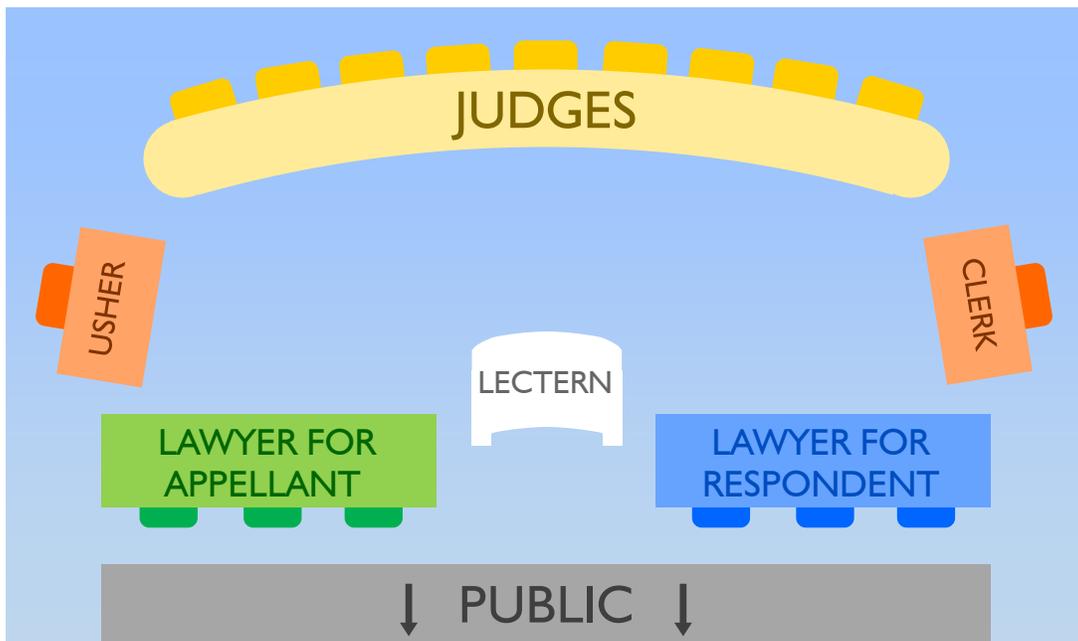
In order to render a fair and impartial decision, a judge must **listen, ask questions and analyze the legal arguments** presented by each of the parties. This decision must be based on evidence and law, not on personal feelings or opinions. The judge **can have no bias**.



### *OTHER ACTORS*

- The "**clerk**" fixes the time and date of the appeals to be decided by the Court. They **take note of what is happening** in the file and assist the judges outside the courtroom.
- The "**usher**" ensures that the judges have all the documents they need. They also **maintain order in the courtroom** during the appeal.

Here is what the main hall of the Supreme Court looks like:



# THE CHARTERS

## I. Charter Protected Rights

You may have noticed that the **terms** used are very **general** when reading the sections of the Canadian and Quebec Charters. This allows the Charters to cover **multiple situations** and to adapt to the **evolution of our society**.

Here are some of the main rights protected by **both Charters**:



Canadian Charter	PROTECTED RIGHTS	Quebec Charter
Section 7	Right to <b>life, liberty</b> and <b>security</b> of the person	Section 1
Section 2	<b>Fundamental freedoms:</b> Freedom of religion Freedom of expression Freedom of association and peaceful assembly	Section 3
Section 3	<b>Right to vote</b> and to stand for election	Section 22
Section 15	<b>Equality Rights</b> Right not to be discriminated against based on race, origin, colour, religion, sex, etc.	Section 10
Section 8	Protection against <b>abusive searches</b> .	Section 24.1
Section 9-10	Protection in the event of <b>detention</b> or <b>arrest</b>	Section 25-32
Section 11d	Right to be <b>presumed innocent</b> , in a criminal trial	Section 33

Some rights are **only** protected **by one of the Charters**:

Canadian Charter	PROTECTED RIGHTS	Quebec Charter
×	Right to <b>dignity, honour and reputation</b> Right to respect for one's <b>privacy</b>	← Sections 4-5
Sections 16-23 →	Rights relating to the <b>official languages</b> Right to <b>receive education in the language of the linguistic minority</b> of the province (French or English)	×
×	Rights relating to <b>property</b> (protection of one's home, etc.)	← Sections 6-8
Sections 35-35.1 →	Rights of <b>Aboriginal peoples</b>	×
×	<b>Economic and Social Rights</b> Relating to education, standard of living, culture, the environment, etc.	← Sections 39-48

## II. Application of the Charters

You will understand that it is not because the Charters list fundamental rights that these will necessarily be respected! In the event of conflict, the Charters allow individuals and legal entities (e.g., a company) to **apply to a court** to rule on the matter.

The Canadian and Quebec Charters do not, however, address exactly the same situations: they are said to have a different "**scope**".

### *A) WHEN A LAW INFRINGES A PROTECTED RIGHT*



The Parliament of Canada and the National Assembly of Quebec **vote and adopt** many laws. As we have seen, these laws must respect the Charters. A law is said to "**infringe**" a protected right when it fails to comply with a section of one of the Charters. It is then possible to challenge this law before the courts.

The **Canadian Charter** may be used to challenge the laws of Canada and those of Quebec. On the other hand, the **Quebec Charter** applies only to provincial laws.

### *B) WHEN THE GOVERNMENT INFRINGES ON A PROTECTED RIGHT*

Sometimes it is not the law itself that infringes a protected right but the decision or actions of a person who is responsible for enforcing the law. The Charters then make it possible to challenge "**the action of the government**".

In addition to ministers and officials, the term "government" includes **cities, police services, public schools**, etc. The arrest by a police officer or the search of a pupil by a principal may therefore be challenged if they infringe a fundamental right.



### *C) WHEN A PRIVATE PERSON INFRINGES A PROTECTED RIGHT*

The **Quebec Charter** applies to the acts of "private persons" as well. It applies to the acts of individuals, organizations and enterprises that **are not part of the government**. This is a crucial difference between the two Charters. For example, the Quebec Charter makes it possible to challenge discrimination by a private employer, a merchant or a property owner.

#### **Non-Citizens and the Charter**

Be careful! Words are important in law! Several articles in the Charters use terms such as "everyone," "every human being" or "every person" rather than "citizen." These sections also apply to those who are not Canadian citizens.

For example, section 7 of the Canadian Charter applies to a refugee who risks being deported to a country where his or her life is in danger.

On the other hand, other sections protect only those who have citizenship status. This is the case with the right to vote (section 3 of the Canadian Charter).

### **III. The Limits to Protected Rights**

Our fundamental rights are generally well-protected by the Canadian and Quebec Charters. However, these rights are not absolute. Every protected right has its limits and it is sometimes possible to infringe it.

It is said that "your rights end where the rights of others begin." For example, when a conflict involves one of the Charters, judges often have to **find a balance** between rights and interests that are different, but legitimate on their own terms.

Consider the following example:



A **university punishes two of its students** for using harsh words to criticize a teacher on Facebook. Students decide to challenge their punishment before the courts.



- According to them, the university's decision does not respect their **right to freedom of expression**, which is protected by the Charters;
- According to the university, it is important to punish lapses in conduct to **ensure a respectful and safe academic environment**.

In such a situation, the judge must strike a balance between the rights of one party (the students) and of the other (the university), which are different from each other but

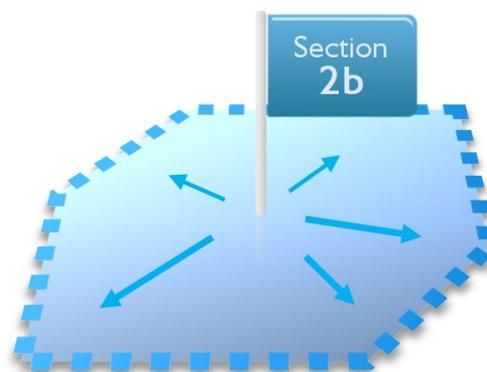
There are **three main limits** to the rights protected by the Canadian and Quebec Charters. Let's start with the **first two** (we will see the third in the next class).

### A) THE SCOPE OF RIGHTS

Since the adoption of the Charters, judges have clarified the rights the Charters guarantee. For example, each right has a "**scope**" that covers certain situations and excludes others.

For example, the courts have decided that, clearly, **freedom of expression** doesn't include **violent acts**.

An individual who strikes his neighbour could claim to have only wanted to express his thoughts by doing so... but he will not be able to invoke the Charters in his defence!



### B) INTERNAL LIMITS TO RIGHTS

The scope of a right may be **limited by the very wording of the section** of one of the Charters. This is called an "**internal limit**" or an "**inherent**" limit to a right.

For example, sections 8 of the Canadian Charter and 24.1 of the Quebec Charter protect against "**abusive**" searches. Therefore, a police officer may legally search a person if he does so in a reasonable manner or, in other words, a non-abusive manner.

### III. The Limits on Protected Rights (continued)

We have seen that the rights protected by the Charters are not absolute. Each right has a particular limit which limits its scope. It is sometimes the courts that determine this limit and at other times it is the very text of the Charters (internal limits).

There is a third "external" limit to fundamental rights: a **justified infringement**. This limit is important for the pleading exercise that you will complete. Let us take a closer look at it.

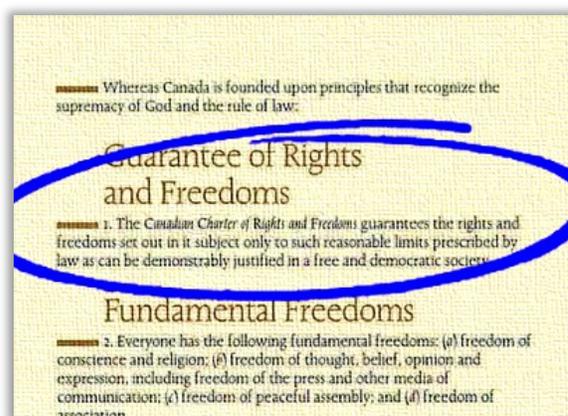
#### C) *THE JUSTIFIED INFRINGEMENT OF A RIGHT*

When the **State** infringes a fundamental right (by statute or by government action), the Canadian Charter provides an opportunity to **justify the infringement**. This is **section 1** of the Charter that allows the State to restrict fundamental rights, but only if it does so in a **reasonable and justified manner in a free and democratic society**.

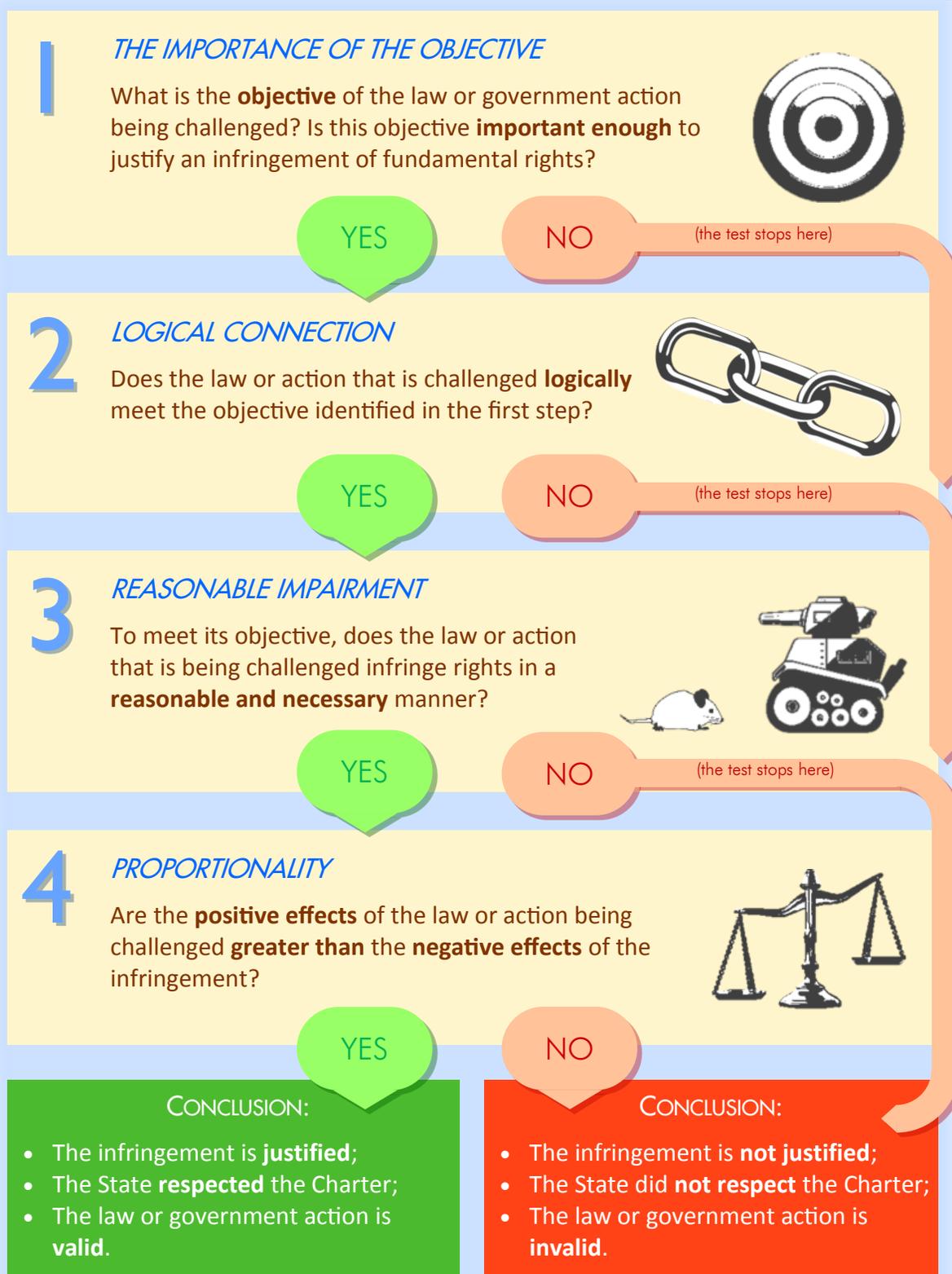
The Supreme Court has developed a **4-part test** to determine if an infringement is justified under section 1. The Supreme Court applies this test as soon as it reaches the conclusion that a fundamental right has indeed been infringed.

The Supreme Court must decide in the State's favour if each step of the test is successfully passed: this means that the Charter has been respected.

To note! The test can also be applied to the Quebec Charter via **article 9.1**.



Here is a **simplified version of the test**, to be done once the infringement has been demonstrated:



## Example: Tobacco and Freedom of Expression

To better understand the test in section 1, let us see how the judges of the Supreme Court of Canada **applied** it in *RJR-MacDonald v Canada* (1995).

### FACTS:

The Parliament of Canada passed legislation **prohibiting all forms of cigarette advertising.**

Tobacco manufacturers are challenging the law in the courts: they say it is not respecting their **freedom of expression.**

For the State, this legislation is important because it is designed to protect the health of Canadians and discourage young people from smoking.



### QUESTIONS:

1. *Does the law infringe the freedom of expression of tobacco manufacturers?*

**Yes.** Commercial advertising is a form of expression **protected by section 2(b) of the Canadian Charter.** Prohibiting tobacco manufacturers from advertising therefore infringes on their freedom of expression.

2. *Is the infringement justified in a free and democratic society?*

Having answered « yes » to the previous question, the Court **must now apply the test** to determine if the law is saved by section 1 of the Charter. Let's examine the Court's answer, step-by-step.

## 1 THE IMPORTANCE OF THE OBJECTIVE

What is the objective of the law or government action being challenged? Is this objective important enough to justify an infringement of fundamental rights?

**YES.** The objective of the legislation is to prevent Canadians (especially young people) from being persuaded to smoke. This objective is sufficient, given the health hazard of tobacco.

## 2 LOGICAL CONNECTION

Does the ban on cigarette advertising logically prevent Canadians from being persuaded to smoke?

**YES.** It is reasonable to believe that certain types of advertising cause people to smoke. There is therefore a logical connection between the law and the objective sought.

## 3 REASONABLE IMPAIRMENT

Does the prohibition of any advertising of cigarettes infringe rights in a manner that is reasonable and necessary to meet its objective?

**NO.** The total ban is too harsh and unnecessary. The State could have simply prohibited certain types of advertising (for example, advertising that influences young people).

## 4 PROPORTIONALITY

Are the positive effects of the law on society greater than the negative effects on the rights of tobacco manufacturers?

The Court does not have to address this issue (the State has already failed in the previous step).



### CONCLUSION:

- The infringement on freedom of expression is **not justified**.
- The State did **not respect** the Charter.
- The tobacco manufacturers are **successful**.
- The law is **invalidated**.

## IV. How do you remedy the infringement of a right?

At the end of the test, a court can conclude that the Charter was not respected. But **practically speaking**, what does this mean for the person who suffered the infringement?

This means that the victim is entitled to a “**remedy**”. It is the Court that orders the remedy in the conclusions of the judgment. The appropriate remedy may vary depending on the **context** of the case.

In the case of an action or decision that affects only one individual, it is often sufficient to annul it. If the harm is already done, it is also possible that the victim is compensated by a sum of money or in some other way.

The Court can go so far as to declare a law “unconstitutional” if it does not respect the Charter. The law therefore **no longer has any effect on anyone**. Judges must, however, consider the possible impact of such an invalidity on the public. More often than not, it will be preferable to invalidate only part of the law or to give the State time to modify it.



*Supreme Court of Canada Collection*

## PREPARING FOR PLEADINGS

### Developing Legal Arguments on Appeal



Supreme Court of Canada Collection

In the Supreme Court, lawyers try to convince judges that **the position of their party is correct** (appellant or respondent). To convince judges, lawyers put forward **legal arguments**. They must then apply the relevant legal concepts to the facts of the case by being **creative**. The Court renders its judgment after analyzing all the arguments of the two parties.

But how do you build convincing legal arguments? You do so in **four steps**:

#### 1. Know your case:

- Begin by reading the **facts of your case**.
- Pay attention to the **questions asked**: these are the questions you must answer with your legal arguments.
- For **each** of the questions asked, go through steps 2 to 4 below.

#### 2. Identify the relevant legal rule(s):

- Review the **Charter** texts and identify the item(s) that are most **relevant** to the question asked.
- **Determine the scope** of each section, i.e. how it protects the fundamental right concerned. To do so, refer to the information in this **guide** and to the **additional concepts** provided with your case.

#### 3. Apply the law(s) to the facts:

- You must **explain** how the rule (s) you have identified apply **to the facts of your case**.
- Highlight the **facts that benefit your party** and explain why these facts are relevant to the question asked.
- If some facts disadvantage you, you can explain why they are **not relevant** .
- Also try to **anticipate and disprove the arguments of the other party**.

Be careful: **stick to the facts** that have been given to you. Do not invent facts to benefit you. Also avoid mixing legal rules with your personal opinions!

#### 4. Concluding remarks:

- In light of your explanations, give a **clear** answer to the question. Be convincing!

## Examples of Legal Arguments

Let us start with facts inspired by a true judgment, the *Hendricks* case (2002), to develop a legal argument using the above method. Note that the facts have been simplified and that the arguments presented are not those that were actually pleaded.

And rest assured! This example refers to legal concepts that you have not learned. Pay particular attention to how the legal rules have been explained (step 2) and applied to the

### FACTS:

Gilles and Stephen are a couple and have lived together for 30 years. They bought everything they own together and are financially dependent on each other. However, they cannot marry: a federal law dictates that marriage is reserved for a man and a woman.

Gilles and Stephen (the "plaintiffs") therefore decided to challenge the law in the courts. They assert that it infringes their right to equality and non-discrimination.

### QUESTION:

*Does the law affect the plaintiff's right to equality and non-discrimination?*

Return to the four steps we have seen before, putting ourselves in the shoes of Gilles' and Stephen's lawyers.



### 1. Know your case:

(This is done.)



### 2. Identify the relevant legal rule:

The right to equality and non-discrimination is protected by section 15(1) of the Canadian Charter. This Charter applies to federal and provincial legislation.

Section 15(1) prohibits laws from treating a person differently, in a manner that disadvantages him or her and for a prohibited reason. This prohibition extends to the grounds that are set out in the section, but also to other grounds that are comparable.

### 3. Apply the rule to the facts:

- The law treats plaintiffs differently because it prevents some couples from marrying but allows others to do so.
- Yet, plaintiffs love each other and have lived together for a long time. Moreover, they own everything together and are financially dependent upon each other. They could improve their situation by getting married, but the law prevents them from doing so. Therefore, the law treats the plaintiffs in a manner that disadvantages them.
- Finally, the plaintiffs are treated in this way because they are homosexual. This reason is prohibited because it is comparable to those listed in section 15(1). Indeed, homosexuals are often victims of prejudice.

### 4. Concluding remarks:

It is therefore clear that the law infringes the plaintiffs' rights to equality and non-discrimination.

On the basis of the same facts and the same legal rule, lawyers for the opposing party (the State) could develop a **contrary argument**:

### 3. Apply the rule to the facts:

- It is true that the law treats couples like the plaintiffs differently.
- However, plaintiffs are not disadvantaged. People who are couples can very well live happily without getting married. This is the case for the plaintiffs who have lived together for 30 years. The fact that they are financially dependent on one another is irrelevant because it was their choice to purchase everything together.
- Sexual orientation is not a prohibited ground of discrimination. This ground is not listed in section 15(1) and is hardly comparable to those that are listed.

### 4. Closing remarks:

Accordingly, the law does not infringe the plaintiffs' right to equality and non-discrimination.

In this example, the scope of the right to equality and non-discrimination (step 2) was first summarized in a few words. Then, **for each element** of this legal rule, the facts relevant and favourable to the asserted position (step 3) were highlighted.

Now, it is your turn to play! Before you begin to develop your own legal arguments, read the clarifications provided for your case. Good luck!

## PREPARING FOR PLEADINGS (CONTINUED)

### The Decorum

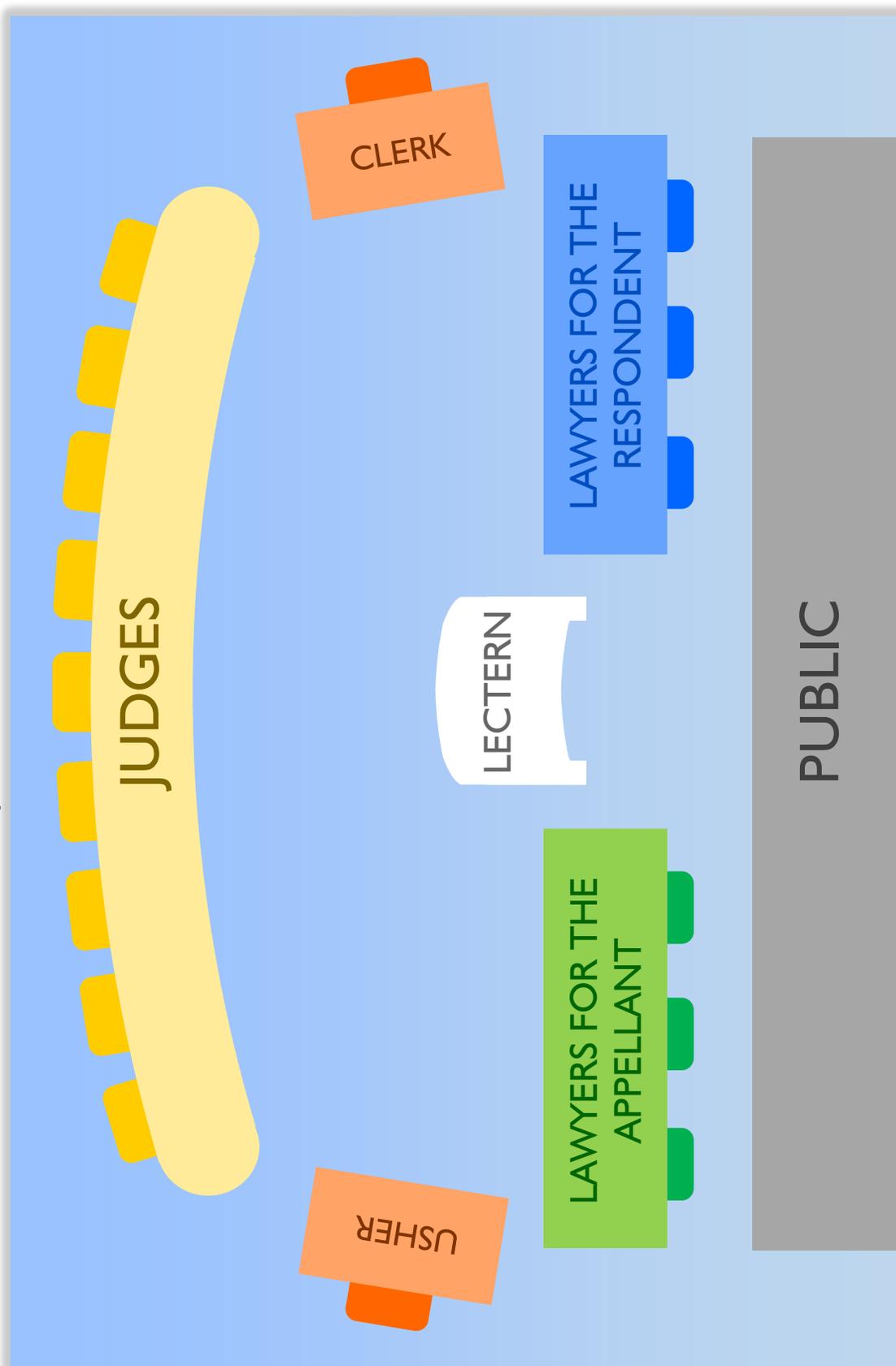
There are several **rules of conduct** to follow in the courtroom. This is called "**decorum**", which you must respect during the exercise:

- When the **judges enter the room**, the usher asks all persons present to stand. Once the judge is seated, they can sit down.
- Whenever a lawyer speaks to a judge, **he or she must stand up** and address the judge using the title "**Mister Justice**" or "**Madam Justice**".
- During the pleadings, the lawyer **always speaks to the judges**. He or she must not address the lawyers of the opposing party directly.
- Amongst themselves, lawyers are called "colleague" or "friend" ("confrère" or "consoeur"). One can also say "**Maître**", followed by the surname (this is the title given to lawyers in Québec).
- Lawyers must be **respectful** at all times. They must never interrupt the judges or lawyers of the opposing party. They must wait for the permission of a judge to answer a question or to speak.



Supreme Court of Canada Collection

Floorplan of a Courtroom



## APPELLANT'S LAWYERS

### INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

#### What you need to do:

#### Before the Hearing

Prepare your **legal arguments** carefully as a team. Also review **pages 9 to 12** of your guide.

Determine who among you will present each of the arguments before the Court. Two lawyers can share one argument.

#### During the Hearing

Follow the **decorum** rules described on page 55 of your guide. At the beginning of the hearing, remain silent and stand up when asked.

The order of pleadings is on page 10 of your guide. **You start!** Some clarifications:

1

The first lawyer who addresses the judges must summarize the **facts** of the case. Once done, present **all** your arguments in turn .

2

It is then the respondent's lawyers' turn to speak. Listen carefully and take notes .

3

You then have the right to **respond** to the pleadings of your opponents. Warning: you can only react to the arguments they have invoked. It is no longer time to invent new arguments!

4

In turn, lawyers have the right to reply (if a judge allows). The pleadings end here.

When the pleadings are over, the judges withdraw to **deliberate**. You will know their final decision before the end of the period .

#### A few tips:

- Remember that a legal argument is **based on facts and legal rules**. It is of no use to give your personal opinions during your pleadings .
- In order for the judges' decision to be in your favour, it is sufficient that the majority of the judges are just a little bit more convinced by your arguments than by those of your opponents (50% +1) .
- To be convincing, speak **slowly** and look at the judges. Present your ideas **clearly** and **in a logical order**.
- It is normal for you to be nervous ... even the best lawyers are! Trust yourself!

# RESPONDENT'S LAWYERS

## INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

### What you need to do:

#### Before the Hearing

Prepare your **legal arguments** carefully as a team. Also review **pages 9 to 12** of your guide.

Determine who among you will present each of the arguments before the Court. Two lawyers can share one argument.

#### During the Hearing

Follow the **decorum** rules described on page 27 of your guide. At the beginning of the hearing, remain silent and stand up when asked.

The order of pleadings is on page 20 of your guide. It is the appellant's lawyers who start. Some clarifications:

1

During the pleading of your opponents, listen carefully and take notes. Wait until they have completed all of their arguments .

2

Wait for the judges to give you **permission** to make your pleadings. First, if you did not like the way your opponents described the **facts**, you can present your version. Then, present all your arguments in turn. Take advantage of this to respond to what lawyers for the appellant pleaded .

3

Lawyers for the appellant then has the **right of reply**. When they are finished, you can ask the judges for permission to respond to what they have said. This is not always necessary.

When the pleadings are over, the judges withdraw to **deliberate**. You will know their final decision before the end of the period.

**A few tips:**

- Remember that a legal argument is based on **facts and legal rules**. It is of no use to give your personal opinions during your pleadings.
- In order for the judges' decision to be in your favour, it is enough that the **majority** of the judges are just a little bit more convinced by your arguments than by those of your opponents (50% +1).
- To be convincing, speak **slowly** and look at the judges. Present your ideas **clearly** and **in a logical order**.
- It is normal for you to be nervous ... even the best lawyers are! Trust yourself!

## JUDGES

### INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

#### What you need to do:

#### Before the Hearing

Carefully read the **facts** of the case that you will hear, as well as **pages 9 to 12** of your guide. Consider the arguments that could be made by both parties. However, you must keep an **open mind**: lawyers must be able to convince you with their pleadings!

When asked, leave the room for the start of the hearing.

#### During the Hearing

Stay focused and follow the **decorum** rules outlined on page 27 of your guide. As judges, you are "masters" of the hearing. Some clarifications:

1

Wait for the usher to announce for you to **enter the room**. Walk in line and sit in your designated places.

- 2 During the pleadings of both parties, **listen carefully to the arguments** of the lawyers and take notes if necessary .  
You have the right to ask questions to the lawyers. Write them down and wait for all the arguments to be made. Limit yourself to the questions **necessary** to clarify a specific point. You can point out to a lawyer that he or she has invented facts or that he or she has moved away from the law to give his or her personal opinion. At all times, be **respectful!**
- 3 When the **appellant's** lawyers have completed all their arguments, tell the **respondent's** lawyers that they can start their own arguments. Then give both parties permission to **reply** (unless instructed otherwise by an adult).
- 4 Once the **pleadings** are over, it is time to leave the room to deliberate (see below). Designate a spokesperson who will announce your **final decision** once you are back in the room.

#### **Deliberations :**

You will have a few minutes to discuss between you and the guest judge the decisions you will make. You must make a **choice between the positions** of the appellant and the respondent.

- Your decision must be based solely on the facts and legal arguments presented to you. Use your notes and those taken by the clerk.
- You do not have to agree on all the points of either of the parties. As soon as one party convinces you a little bit more than the other (**50% +1**), you must decide in his or her favor.
- There is also no need for unanimity between the judges: the **majority** prevails.

# USHER

## INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

### What you must do:

#### Before the Hearing

If your teacher asks you, come to class a little earlier to help him or her **place the courtroom**. Inspire yourself from the plan on **page 28** of your guide. You should also **know the name of the guest judge**.

When it is time to start the hearing, **help the other students** find their respective places. The judges must leave the room.

#### During the Hearing

It is you who opens and closes the hearing and enforces the **rules of decorum** (which you can read on **page 27** of your guide). Some clarifications:

1 When all are seated in the right place, announce the entrance of the judges by declaring this to the room:

« Silence. Please stand! »

Once the judges are at their seats, say:

2 « The Supreme Court of Canada, presided over by the Honorable [name of guest judge] is in session. Please sit down. »

3

During the **pleadings**, make sure that members of the public are **silent** and that lawyers follow the rules of decorum.

4

When the pleadings are over, announce to the room that the judges will go out to **deliberate**. Repeat:

« Silence. Please stand! »

Then, once all judges have exited:

« Please sit down. »

5

Repeat the **same two sentences** when the judges return to announce their decision .

## CLERK INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

### What you should do:

#### Before the Hearing

If your teacher asks you, come to class a little earlier to help her or him **prepare the courtroom**. Inspire yourself from the plan on page 28 of your guide.

When it's time to start the hearing, **help the other students** find their respective places. The judges must leave the room.

#### During the Hearing

Take note of everything you can on a piece of paper:

- ◆ The order of pleadings (who took the floor and when?);
- ◆ The main points of the arguments put forward by the lawyers of the two parties;
- ◆ The questions asked by the judges and the answers given.

At the end of the pleadings, give your sheet to the judges: they will be able to use it during their deliberations.

## JOURNALIST INFORMATION SHEET

To write a good **article**, read the facts and listen carefully during the hearing. Ask yourself the following questions:

- What are the main facts?
- What were the main arguments of the lawyers?
- What were the main questions asked by judges to lawyers?
- Should some legal rules be explained to the readers?
- What was the court's decision?

You can also ask these questions to your colleagues who are judges and lawyers.

## ILLUSTRATOR INFORMATION SHEET

Why do we use an illustrator rather than a cameraman or a photographer?

Because many Canadian courts prohibit video cameras in courtrooms and all Canadian courts prohibit taking photographs. On the other hand, most hearings before the Supreme Court are webcast and televised.

The role of the illustrator is therefore to draw what is going on in the courtroom. His or her drawings can be used in newspapers or on television. Draw the lawyers and judges in action.



## APPENDIX 1 CANADIAN CHARTER OF RIGHTS AND FREEDOM

### PART I OF THE 1982 CONSTITUTION ACT

Assented to on March 29, 1982

Whereas Canada is founded upon principles that recognize the supremacy of God and the rules of law:

### Guarantee of Rights and Freedoms

#### *Rights and Freedoms in Canada*

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### Fundamental Freedoms

#### *Fundamental Freedoms*

2. Everyone has the following fundamental freedoms:
- freedom of conscience and religion;
  - freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
  - freedom of peaceful assembly; and
  - freedom of association.

### Democratic Rights

#### *Democratic Rights of Citizens*

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be

qualified for membership therein.

#### *Maximum Duration of Legislative Bodies*

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.

#### *Continuation in special circumstances*

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

#### *Annual Sitting of Legislative Bodies*

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

### Mobility Rights

#### *Mobility of Citizens*

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

#### *Rights to move and gain livelihood*

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- to move to and take up residence in any province; and
- to pursue the gaining of a livelihood in any province.



### *Limitation*

- (3) The rights specified in subsection (2) are subject to
- a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
  - b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

### *Affirmative Action Programs*

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

## Legal Rights

### *Life, Liberty and Security of Person*

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

### *Search or Seizure*

8. Everyone has the right to be secure against unreasonable search or seizure.

### *Detention or Imprisonment*

9. Everyone has the right not to be arbitrarily detained or imprisoned.

### *Arrest or detention*

10. Everyone has the right on arrest or detention:

- a) to be informed promptly of the reasons therefor;
- b) to retain and instruct counsel without delay and to be informed of that right; and
- c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

### *Proceedings in Criminal and Penal Matters*

11. Any person charged with an offence has the right:

- a) to be informed without unreasonable delay of the specific offence;
- b) to be tried within a reasonable time;
- c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- e) not to be denied reasonable bail without just cause;
- f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- i) if found guilty of the offence and if the punishment for the offence has been varied

between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

#### *Treatment of Punishment*

**12.** Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

#### *Self-Crimination*

**13.** A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

#### *Interpreter*

**14.** A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

## Equality Rights

#### *Equality before and under law and equal protection and benefit of law*

**15. (1)** Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

#### *Affirmative Action Programs*

**(2)** Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

## Official Languages in Canada

#### *Official Languages in Canada*

**16. (1)** English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

#### *Official languages of New Brunswick*

**(2)** English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

#### *Advancement of status and use*

**(3)** Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

#### *English and French linguistic communities in New Brunswick*

**16.1 (1)** The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

#### *Role of the legislature and government of New Brunswick*

**(2)** The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

#### *Proceedings of parliament*

**17. (1)** Everyone has the right to use English or French in any debates and other proceedings of Parliament.

*Proceedings of New Brunswick legislature*

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

*Parliamentary statutes and records*

**18. (1)** The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

*New Brunswick statutes and records*

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

*Proceedings in courts established by Parliament*

**19. (1)** Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

*Proceedings in New Brunswick courts*

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

*Communications by public with federal institutions*

**20. (1)** Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

- a) there is a significant demand for communications with and services from that office in such language; or
- b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both

English and French.

*Communications by public with New Brunswick institutions*

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

*Continuation of existing constitutional provisions*

**21.** Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

*Rights and privileges preserved*

**22.** Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

## Minority Language Educational Rights

*Language of instruction*

**23. (1)** Citizens of Canada:

- a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary

and secondary school instruction in that language in that province.

#### *Continuity of language instruction*

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

#### *Application where numbers warrant*

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

- a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
- b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

## Enforcement

#### *Enforcement of guaranteed rights and freedoms*

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

#### *Exclusion of evidence bringing administration of justice into disrepute*

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or

freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

## General

#### *Aboriginal rights and freedoms not affected by Charter*

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

- a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

#### *Other rights and freedoms not affected by Charter*

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

#### *Multicultural heritage*

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

#### *Rights guaranteed equally to both sexes*

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

#### *Rights respecting certain schools preserved*

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of

Canada in respect of denominational, separate or dissentient schools.

*Application to territories and territorial authorities*

**30.** A reference in this Charter to a Province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

*Legislative powers not extended*

**31.** Nothing in this Charter extends the legislative powers of any body or authority.

## Application of Charter

*Application of Charter*

**32. (1)** This Charter applies:

- a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

*Exception*

**(2)** Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

*Exception where express declaration*

**33. (1)** Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

*Operation of exception*

**(2)** An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

*Five year limitation*

**(3)** A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

*Re-enactment*

**(4)** Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

*Five year limitation*

**(5)** Subsection (3) applies in respect of a re-enactment made under subsection (4).

## Citation

*Citation*

**34.** This Part may be cited as the Canadian Charter of Rights and Freedoms.



## APPENDIX 2

# CHARTER OF HUMAN RIGHTS AND FREEDOMS

### Preamble

*WHEREAS every human being possesses intrinsic rights and freedoms designed to ensure his protection and development;*

*Whereas all human beings are equal in worth and dignity, and are entitled to equal protection of the law;*

*Whereas respect for the dignity of human beings, equality of women and men, and recognition of their rights and freedoms constitute the foundation of justice, liberty and peace;*

*Whereas the rights and freedoms of the human person are inseparable from the rights and freedoms of others and from the common well-being;*

*Whereas it is expedient to solemnly declare the fundamental human rights and freedoms in a Charter, so that they may be guaranteed by the collective will and better protected against any violation;*

*Therefore, Her Majesty, with the advice and consent of the National Assembly of Québec, enacts as follows:*

## PART 1: HUMAN RIGHTS AND FREEDOMS

### Chapter 1 : Fundamental Freedoms and Rights

1. Every human being has a right to life, and to personal security, inviolability and freedom.

He also possesses juridical personality.

2. Every human being whose life is in peril has a right to assistance.

45

Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.

3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

4. Every person has a right to the safeguard of his dignity, honour and reputation.

5. Every person has a right to respect for his private life.

6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.

7. A person's home is inviolable.

8. No one may enter upon the property of another or take anything therefrom without his express or implied consent.

9. Every person has a right to non-disclosure of confidential information.

No person bound to professional secrecy by law and no priest or other minister of religion may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law.



The tribunal must, ex officio, ensure that professional secrecy is respected.

**9.1.** In exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.

In this respect, the scope of the freedoms and rights, and limits to their exercise, may be fixed by law.

## Chapter 1.1: Right To Equal Recognition and Exercise of Rights and Freedoms

**10.** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

**10.1.** No one may harass a person on the basis of any ground mentioned in section 10.

**11.** No one may distribute, publish or publicly exhibit a notice, symbol or sign involving discrimination, or authorize anyone to do so.

**12.** No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

**13.** No one may in a juridical act stipulate a clause involving discrimination.

Such a clause is without effect.

**14.** The prohibitions contemplated in sections 12 and 13 do not apply to the person who leases a room situated in a dwelling if the lessor or his family resides in such dwelling, leases only one room and does not advertise the room for lease by a notice or any other public means of solicitation.

**15.** No one may, through discrimination, inhibit the access of another to public transportation or a public place, such as a commercial establishment, hotel, restaurant, theatre, cinema, park, camping ground or trailer park, or his obtaining the goods and services available there.

**16.** No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

**17.** No one may practise discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional order or association of persons carrying on the same occupation.

**18.** No employment bureau may practise discrimination in respect of the reception, classification or processing of a job application or in any document intended for submitting an application to a prospective employer.

**18.1.** No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in section 10 unless the information is useful for the application of section 20 or the implementation of an affirmative action program in existence at the time of the application.

**18.2.** No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.

**19.** Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

Adjustments in compensation and a pay equity plan are deemed not to discriminate on the basis of gender if they are established in accordance with the Pay Equity Act (chapter E-12.001).

**20.** A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.

**20.1.** In an insurance or pension contract, a social benefits plan, a retirement, pension or insurance plan, or a public pension or public insurance plan, a distinction, exclusion or preference based on age, sex or civil status is deemed non-discriminatory where the use thereof is warranted and the basis therefor is a risk determination factor based on actuarial data.

In such contracts or plans, the use of health as a risk determination factor does not constitute discrimination within the meaning of section 10.

## Chapter II : Political Rights

**21.** Every person has a right of petition to the National Assembly for the redress of grievances.

**22.** Every person legally capable and qualified has the right to be a candidate and to vote at an election.

## Chapter III : Judicial Rights

**23.** Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of his rights and obligations or of the merits of any charge brought against him.

The tribunal may decide to sit *in camera*, however, in the interests of morality or public order.

**24.** No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure.

**24.1.** No one may be subjected to unreasonable search or seizure.

**25.** Every person arrested or detained must be treated with humanity and with the respect due to the human person.

**26.** Every person confined to a correctional facility has the right to separate treatment appropriate to his sex, his age and his physical or mental condition.

**27.** Every person confined to a correctional facility while awaiting the outcome of his trial has the right to be kept apart, until final judgment, from prisoners serving sentence.

28. Every person arrested or detained has a right to be promptly informed, in a language he understands, of the grounds of his arrest or detention.

28.1. Every accused person has a right to be promptly informed of the specific offence with which he is charged.

29. Every person arrested or detained has a right to immediately advise his next of kin thereof and to have recourse to the assistance of an advocate. He has a right to be informed promptly of those rights.

30. Every person arrested or detained must be brought promptly before the competent tribunal or released.

31. No person arrested or detained may be deprived without just cause of the right to be released on undertaking, with or without deposit or surety, to appear before the tribunal at the appointed time.

32. Every person deprived of his liberty has a right of recourse to *habeas corpus*.

32.1. Every accused person has a right to be tried within a reasonable time.

33. Every accused person is presumed innocent until proven guilty according to law.

33.1. No accused person may be compelled to testify against himself at his trial.

34. Every person has a right to be represented by an advocate or to be assisted by one before any tribunal.

35. Every accused person has a right to a full and complete defense and has the right to examine and cross-examine witnesses.

36. Every accused person has a right to be assisted free of charge by an interpreter if he does not understand the language used at the hearing or if he is deaf.

37. No accused person may be held guilty on account of any act or omission which, at the time when it was committed, did not constitute a violation of the law.

37.1. No person may be tried again for an offence of which he has been acquitted or of which he has been found guilty by a judgment that has acquired status as *res judicata*.

37.2. Where the punishment for an offence has been varied between the time of commission and the time of sentencing, the accused person has a right to the lesser punishment.

38. No testimony before a tribunal may be used to incriminate the person who gives it, except in a prosecution for perjury or for the giving of contradictory evidence.

## Chapter IV : Economic and Social Rights

39. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are capable of providing.

40. Every person has a right, to the extent and according to the standards provided for by law, to free public education.

41. Parents or the persons acting in their stead have a right to give their children a religious and moral education in keeping with their convictions and with proper regard for their children's rights and interests.

42. Parents or the persons acting in their stead have a right to choose private educational establishments for their children, provided such establishments comply with the standards prescribed or approved by virtue of the law.

43. Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group.

44. Every person has a right to information to the extent provided by law.

45. Every person in need has a right, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living.

46. Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.

46.1. Every person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law.

47. Married or civil union spouses have, in the marriage or civil union, the same rights, obligations and responsibilities.

Together they provide the moral guidance and material support of the family and the education of their common offspring.

48. Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.

## Chapter V: Special and Interpretative Provisions

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

49.1. Any complaint, dispute or remedy the subject-matter of which is covered by the Pay Equity Act (chapter E-12.001) shall be dealt with exclusively in accordance with the provisions of that Act.

Moreover, any question concerning pay equity between a predominantly female job class and a predominantly male job class in an enterprise employing fewer than 10 employees shall be settled by the Commission des normes, de l'équité, de la santé et de la sécurité du travail in accordance with section 19 of this Charter.

50. The Charter shall not be so interpreted as to suppress or limit the enjoyment or exercise of any human right or freedom not enumerated herein.

50.1. The rights and freedoms set forth in this Charter are guaranteed equally to women and men.

51. The Charter shall not be so interpreted as to extend, limit or amend the scope of a provision of law except to the extent provided in section 52.

52. No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.



53. If any doubt arises in the interpretation of a provision of the Act, it shall be resolved in keeping with the intent of the Charter.

54. The Charter binds the State.

55. The Charter affects those matters that come under the legislative authority of Québec.

56. 1° In sections 9, 23, 30, 31, 34 and 38, in Chapter III of Part II and in Part IV, the word “tribunal” includes a coroner, a fire investigation commissioner, an inquiry commission, and any person or agency exercising quasi judicial functions.

2° In section 19, the words “salary” and “wages” include the compensations or benefits of pecuniary value connected with the employment.

3° In the Charter, the word “law” or “Act” includes a regulation, a decree, an ordinance or an order in council made under the authority of any Act.

[Parts II to VII of the Quebec Charter are not reproduced]